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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:BO5
PLR-108911-21

Date:
September 24, 2021

LEGEND:

Distributing =

US DRE =

Controlled =

US Sub 1 =

US Sub 2 =

US Sub 3 =

State A =

State B =

Business A =

Business B =

a =

b =

c =

d =

e =

f =

g =

Distributing Debt =

New Shares =

Transition Services
Agreements =

Continuing Arrangements =

Commercial
Arrangements =

Dear _____ :

This letter responds to your letter dated March 24, 2021, as supplemented by subsequent information and documentation, requesting rulings on certain federal income tax consequences of a series of transactions (the "Proposed Transaction"). The material information submitted in that request and subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding one or more "Covered Transactions" under section 355 and section 368 of the Internal Revenue Code (the "Code"). This Office expresses no opinion as to any issue not specifically addressed by the rulings below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

This Office has made no determination regarding whether the Distribution (defined below): (i) satisfies the business purpose requirement of Treas. Reg. §1.355-2(b), (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. §1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation, or any predecessor or successor of the distributing corporation or the controlled corporation, within the meaning of Treas. Reg. §1.355-8 (see section 355(e)(2)(A)(ii) and Treas. Reg. §1.355-7).

Summary of Facts

Distributing, a publicly traded State A corporation, is the parent of a worldwide group that includes both domestic and foreign entities. Distributing and its domestic affiliates join in the filing of a consolidated U.S. federal income tax return. At the time of the Proposed Transaction, Distributing has a single class of voting common stock issued and outstanding, approximately a percent of which is owned by US Sub 1, a State B corporation directly and wholly owned by Distributing. Prior to the Proposed Transaction, Distributing is engaged in Business A and Business B directly and through domestic and foreign subsidiaries.

Immediately before the Proposed Transaction, Distributing owns all the membership interests in US DRE, a newly organized State B limited liability company disregarded from Distributing for U.S. federal income tax purposes. US DRE, in turn, wholly owns US Sub 2, a newly organized State B limited liability company that is classified as a corporation for U.S. federal income tax purposes. US Sub 2 wholly owns US Sub 3, a newly organized State B corporation. Immediately before the Proposed Transaction and as a result of the internal restructuring transactions, US Sub 3 holds, directly or indirectly, substantially all the assets, liabilities, and entities of Business B. Distributing also has multiple tranches of long-term, third-party debt outstanding (the Distributing Debt).

For purposes of satisfying the active trade or business requirement of section 355(b) with respect to the Distribution (defined below), (i) Distributing will rely upon Business A conducted by members of its “separate affiliated group” as defined in section 355(b)(3)(B); and (ii) Controlled will rely upon Business B conducted by members of its “separate affiliated group” as defined in section 355(b)(3)(B). Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that each of Business A and Business B has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Internal Restructuring Transactions

In preparation for the Proposed Transaction, Distributing has undertaken and will undertake a series of internal restructuring transactions to separate Business B from Business A. Through these transactions, Distributing and its subsidiaries will transfer Business B to US DRE in a manner that places Business B in or underneath US DRE.

Proposed Transaction

For what are represented to be valid business reasons, Distributing will undertake the following steps (the Proposed Transaction) to separate Business B from Business A:

1. Prior to the record date for the Distribution (defined below), US Sub 1 will exchange its Distributing common stock for shares of a new class of stock of

- Distributing (the New Shares).
2. Distributing will cause US DRE to convert to a State B corporation (Controlled), as a result of which Distributing will hold all of the common stock of Controlled.
 3. Controlled will borrow cash from one or more third-party lenders (the "Controlled Debt").
 4. Controlled (i) will distribute some or all of the proceeds from the Controlled Debt to Distributing (the "Controlled Distributed Debt Proceeds"), and (ii) may issue debt securities of Controlled to Distributing (the "Controlled Securities") ((i) and (ii) together with Steps 2 and 3 collectively, the "Contribution"). Distributing will not segregate the Controlled Distributed Debt Proceeds in a separate bank account or otherwise. Within b days after the date of the Distribution (defined below), Distributing will use funds equal to at least the aggregate amount of the Controlled Distributed Debt Proceeds to (i) satisfy Distributing Debt, (ii) make distributions to Distributing's shareholders, (iii) repurchase shares of the common stock of Distributing (but not New Shares), and/or (iv) repay ordinary course liabilities.
 5. Distributing will distribute at least 80 percent of the common stock of Controlled pro rata to Distributing's public common shareholders (the "Distribution").

Distributing may retain up to c percent of the common stock of Controlled (any such retained Controlled shares, the "Remainder Shares").

6. Concurrently with the Distribution, Distributing will distribute additional New Shares to US Sub 1.
7. Before or within b days after the Distribution (except as otherwise specified below), the following steps may occur (collectively, the "Debt-for-Debt Exchange"):
 - (a) An investment bank (the "Bank") will make a loan to Distributing (the "First Refinancing Debt") in an amount based on the anticipated fair market value of the Controlled Securities with a maturity date of d. The cash proceeds from the issuance of the First Refinancing Debt will not be segregated in a separate bank account or otherwise. Within b days following the date of the Distribution, Distributing will use an amount equal to the proceeds of the First Refinancing Debt to pay principal, interest or premium on Distributing Debt.

- (b) At least e days after issuance of the First Refinancing Debt, Distributing will enter into an exchange agreement with Bank pursuant to which Distributing will transfer Controlled Securities to Bank in exchange for (and in retirement of) the First Refinancing Debt (the "Debt-for-Debt Exchange Agreement"). The pricing of the Controlled Securities and the exchange ratio for the Debt-for-Debt Exchange will be fixed on the date that the Debt-for-Debt Exchange Agreement is entered into.

Between f days and g days after Distributing and Bank enter into the Debt-for-Debt Exchange Agreement, Distributing will deliver the Controlled Securities to Bank in satisfaction of the First Refinancing Debt. In all cases, the Debt-for-Debt Exchange Agreement will be entered into and the Controlled Securities will be transferred to Bank in satisfaction of the First Refinancing Debt within h days of the date of the Distribution.

8. After the Distribution, the following steps may occur if Distributing retains the Remainder Shares (collectively, the "Debt-for-Equity Exchange," and together with the Debt-for-Debt Exchange, the "Debt Exchanges"):
- (a) Bank will make a loan to Distributing (the "Second Refinancing Debt") in an amount based upon the anticipated fair value of the Remainder Shares with a maturity date of d. The cash proceeds from the issuance of the Second Refinancing Debt will not be segregated in a separate bank account or otherwise. Within h days following the date of the Distribution, Distributing will use an amount equal to the proceeds of the Second Refinancing Debt to pay principal, interest or premium on Distributing Debt.
- (b) At least e days after issuance of the Second Refinancing Debt, Distributing will enter into an exchange agreement with Bank pursuant to which Distributing will transfer some or all of the Remainder Shares to Bank in exchange for (and in retirement of) the Second Refinancing Debt (the "Debt-for-Equity Exchange Agreement"). The pricing of the Remainder Shares and the exchange ratio for the Debt-for-Equity Exchange will be fixed on the date that the Debt-for-Equity Exchange Agreement is entered into.

Between f days and g days after Distributing and Bank enter into the Debt-for-Equity Exchange Agreement, Distributing will deliver the Remainder Shares to the Bank in satisfaction of the Second Refinancing Debt. In all cases, the Debt-for-Equity Exchange Agreement will be entered into and the Remainder Shares will be transferred to Bank in satisfaction of the Second Refinancing Debt within h days of the date of the Distribution.

9. If Distributing retains the Remainder Shares and determines that market and

general economic conditions and sound business judgment do not support the Debt-for-Equity Exchange of all or a portion of the Remainder Shares during the b days following the date of the Distribution, Distributing may (i) distribute such shares within b days of the date of the Distribution pro rata to its public common shareholders (a “Clean-Up Spin”) or pursuant to an exchange offer in redemption of public common shares (a “Clean-Up Split”), or (ii) sell the Remainder Shares in one or more public or private sales as soon as practicable, taking into account market and general economic conditions and sound business judgment, but in no event later than g years after the date of the Distribution.

In the event of a Clean-Up Spin, Distributing will simultaneously distribute additional New Shares to US Sub 1.

In connection with the Proposed Transaction, Distributing and Controlled will have continuing commercial arrangements (the Commercial Arrangements) and will enter into certain customary agreements (collectively, the Continuing Arrangements). The Commercial Arrangements and the Continuing Arrangements will be based on arm’s length terms and conditions, except for the Transition Services Agreements, which will be on a cost or cost-plus basis during their terms.

Representations

The following representations have been made with respect to the Proposed Transaction:

Except as set forth below, Distributing has made all the representations in section 3 of the Appendix to Rev. Proc. 2017-52 with respect to the Proposed Transaction.

1. Distributing has made the following alternative representations: 3(a), 11(a), 15(a), 22(b), 31(a), 41(a).
2. Distributing has not made the following representations, which do not apply to the Distribution: 24, 25, and 40.
3. Distributing has made the following modified representations:

Representation 2: In the Distribution, Distributing will distribute at least 80 percent of the stock of Controlled.

Representation 4: Other than the Controlled Securities, no indebtedness owed by Controlled to Distributing after the Distribution will constitute stock or securities of Controlled or any other entity.

Representation 5: Other than the Remainder Shares transferred in the Debt-for-

Equity Exchange and any Controlled Securities transferred in any Debt-for-Debt Exchange, none of the Controlled stock, Controlled Securities, or Other Property to be distributed in the Distribution will be received in any capacity other than that of a shareholder of Distributing.

Representation 7: For purposes of any Clean-up Split, the fair market value of Controlled stock or Other Property to be received by each shareholder of Distributing that surrenders Distributing stock will be approximately equal to the fair market value of Distributing stock surrendered by the shareholder in the transaction.

Representation 8(b): Distributing may have securities outstanding, but it will not distribute Controlled stock, the Controlled Securities or Other Property to any holder of such securities in the Distribution, in satisfaction thereof, except potentially in satisfaction of a portion of the Distributing Debt pursuant to any Debt Exchanges.

Representation 17: Other than the Controlled Debt and the Controlled Securities, any liabilities assumed (within the meaning of section 357(d)) by Controlled were incurred in the ordinary course of business and are associated with any assets transferred.

Representation 23: Other than with respect to: (i) certain third-party and tax obligations and receivables arising in the ordinary course of business; and, potentially, (ii) certain pension obligations and other post-employment benefits obligations and certain deferred revenue amounts associated with Business B that may be transferred to Controlled, the Distribution does not involve and will not result in a situation in which one party recognizes income but another party recognizes the deductions associated with such income or a situation in which one party owns Property but another party recognizes the income associated with such Property. Any mismatch will not result in a material distortion of income.

Representation 32: Except for under the Continuing Arrangements, ordinary course payables and receivables and, in the event the Debt-for-Debt Exchange is not completed prior to the Distribution, the Controlled Securities, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution of Controlled stock.

Representation 33: Except as contemplated by any Transition Services Agreements, payments made in connection with all continuing transactions, including the Commercial Arrangements, between Distributing and Controlled after the Distribution will be based on arm's-length terms.

Representation 35: The payment of cash in lieu of fractional shares of Controlled in connection with the Distribution is solely for the purpose of

avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained-for consideration. The fractional share interests of each Distributing shareholder will be aggregated and no Distributing shareholder of record will receive cash in an amount equal to or greater than the value of one full share of Controlled (with the possible exception of shareholders who hold Distributing stock in multiple accounts or plans or with multiple brokers).

Representation 46: Other than the Controlled Debt, Controlled will not issue stock or securities to a person other than Distributing in anticipation of the Distribution.

Except as set forth below, Distributing has made all the representations in section 3.04 of Rev.Proc. 2018-53 with respect to the Distribution.

4. Distributing has made the following modified representations:

Representation 4: Distributing incurred the Distributing Debt that will be assumed or satisfied (i)(a) before the request for any relevant ruling is submitted and (b) no later than 60 days before the earliest of the following dates: (1) the date of the first public announcement (as defined in section 1.355-7(h)(10)) of the Distribution or a similar transaction, (2) the date of the entry by Distributing into a binding agreement to engage in the Distribution or a similar transaction, and (3) the date of approval of the Distribution or a similar transaction by the board of directors of Distributing, or (ii) on a date later than such date described in clause (i) and the proceeds of such debt (the First Refinancing Debt and the Second Refinancing Debt) were used to repay Distributing Debt incurred prior to the relevant date described in clause (i).

Representation 6: There are one or more substantial business reasons for any delay in satisfying Distributing Debt with the Controlled Distributed Debt Proceeds or the proceeds of the First Refinancing Debt or the Second Refinancing Debt, or in satisfying the First Refinancing Debt or the Second Refinancing Debt with the Controlled Securities or the Remainder Shares, as applicable, beyond 30 days after the date of the first distribution of Controlled stock to Distributing's shareholders. All the Distributing Debt that will be satisfied with the Controlled Distributed Debt Proceeds, the proceeds of the First Refinancing Debt or the Second Refinancing Debt will be satisfied no later than b days after such distribution. All the First Refinancing Debt or the Second Refinancing Debt that will be satisfied by the Controlled Securities or the Remainder Shares will be satisfied no later than b days after such distribution.

Distributing has made the following additional representations:

5. The retention of any Remainder Shares is for sufficient business purposes.

6. None of Distributing's directors or officers will serve as directors or officers of Controlled as long as Distributing retains any Remainder Shares.
7. Distributing will effect any Debt-for-Equity Exchange within b days of the Distribution; should Distributing continue to own any Remainder Shares after such time, Distributing will sell the Remainder Shares as soon as practicable taking into account market and general economic conditions and sound business judgment, in no event later than g years after the Distribution.
8. Distributing will vote, or cause to be voted, any Remainder Shares in proportion to the votes cast by Controlled's other shareholders, and Distributing may grant a proxy to Controlled to effectuate such voting.
9. Distributing will use an amount of cash (from its general accounts) equal to or greater than the amount of the Controlled Distributed Debt Proceeds to repay Distributing Debt, make distributions to Distributing shareholders, repurchase shares of Distributing stock and/or repay ordinary course liabilities.
10. Any Controlled Securities issued to Distributing in the Contribution will qualify as "securities" within the meaning of section 361(a).

Rulings

Based solely on the information and representations submitted, we rule as follows regarding the Proposed Transaction:

1. The Contribution, together with the Distribution (and any Clean-Up Spin or Clean-Up Split), will be a "reorganization" within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be a "party to a reorganization" within the meaning of section 368(b).
2. Distributing will recognize no gain or loss on the Contribution. Sections 361(a), 361(b), and 357(a).
3. Controlled will recognize no gain or loss on the Contribution. Section 1032(a).
4. Controlled's basis in each asset received from Distributing in the Contribution will be the same as the basis of the asset in the hands of Distributing immediately before the Contribution. Section 362(b).
5. Controlled's holding period for each asset received in the Contribution will include the period during which Distributing held such asset. Section 1223(2).
6. Distributing shareholders will recognize no gain or loss (and no amount will be includible in income) upon the receipt of Controlled stock in the Distribution or

any Clean-Up Spin or Clean-Up Split under section 355(a).

7. Distributing will recognize no gain or loss upon the Distribution or any Clean-Up Spin or Clean-Up Split. Section 361(c).
8. The Controlled Distributed Debt Proceeds and any Controlled Securities will be treated as being distributed pursuant to the plan of reorganization for purposes of sections 361(b)(1)(A) and 361(b)(3).
9. Distributing will recognize no gain or loss on any Debt Exchanges, other than any (i) deductions attributable to the fact that the Distributing Debt may be redeemed at a premium, (ii) income attributable to the fact that the Distributing Debt may be redeemed at a discount, and (iii) interest expense accrued with respect to the Distributing Debt. Section 361(c).
10. The aggregate basis of the Distributing common stock and the Controlled stock in the hands of Distributing's public shareholders immediately after the Distribution or the Clean-up Spin, if applicable, (including any fractional share interest in Controlled stock to which a shareholder may be entitled) will be the same as the aggregate basis of the Distributing common stock held by Distributing's public shareholders immediately before the Distribution or Clean-up Spin, allocated between Distributing stock and Controlled stock in proportion to the fair market value of each in accordance with Treas. Reg. §1.358-2(a)(2). Section 358(a) through (c). If a Clean-up Split is undertaken, the aggregate basis of Controlled stock received by each of Distributing's public shareholders in the Clean-up Split (including any fractional share interest in Controlled stock to which a shareholder may be entitled) will be the same as such public shareholder's aggregate basis in the Distributing common stock surrendered and will be allocated among the shares received in accordance with Treas. Reg. §1.358-2(a)(2). Section 358(a) and (b).
11. If a holder of Distributing common stock that purchased or acquired shares on different dates or at different prices is not able to identify which particular share of Controlled stock is received as a distribution with respect to, or in exchange for, a particular share of Distributing common stock, the holder may designate which particular share of Controlled stock is received as a distribution with respect to, or in exchange for, a particular share of Distributing common stock, provided the designation is consistent with the terms of the Distribution, Clean-Up Spin or Clean-Up Split. Treas. Reg. §1.358-2(a)(2)(vii).
12. The holding period of the Controlled stock received by the Distributing public shareholders in the Distribution, Clean-up Spin or Clean-up Split (including any fractional share interest in Controlled stock to which public shareholders may be entitled) will include the holding period of the Distributing common stock with respect to which the distribution of Controlled stock will be made in the case of the Distribution or a Clean-up Spin or which is surrendered in the exchange in

the case of a Clean-Up Split, provided that the Distributing common stock is held as a capital asset on the date of the distribution. Section 1223(1).

13. Earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. §§1.312-10(a) and 1.1502-33(e).
14. Distributing's continuing ownership of any Remainder Shares until disposition within g years after the Distribution will not adversely impact the qualification of the Distribution under sections 355 and 368(a)(1)(D) and will not be in pursuance of a plan having as one of its principal purposes the avoidance of U.S. federal income tax for purposes of section 355(a)(1)(D)(ii).
15. Any payments made between any of Distributing and Controlled and their respective affiliates under any of the Continuing Arrangements regarding liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable year beginning before and ending after the Distribution and (ii) will not become fixed and ascertainable until after the Distribution will be characterized in a manner consistent with the proper treatment if such payments or transfers had occurred immediately before the Distribution pursuant to the Distribution. See *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952) and Revenue Ruling 83-73, 1983-1 C.B. 84.
16. The receipt by Distributing public shareholders of cash in lieu of fractional shares, if any, of Controlled stock will be treated for U.S. federal income tax purposes as if the fractional shares had been distributed to the Distributing public shareholders as part of the Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss) recognized (determined using the basis allocated to the fractional shares in Ruling 10), if any, will be treated as capital gain (or loss) under section 1001, provided the stock was held as a capital asset by the selling shareholder. Such gain (or loss) will be short-term or long-term capital gain (or loss) determined using the holding period provided in Ruling 12.
17. Following the Distribution, Controlled will not be a successor of Distributing for purposes of section 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are "includible corporations" under section 1504(b) and satisfy the ownership requirements of section 1504(a)(4) will be members of an affiliated group of corporations eligible to file a consolidated U.S. federal income tax return with Controlled as the common parent.

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any conditions

existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings.

Procedural Matters

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this letter may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Kelly E. Madigan

Kelly E. Madigan
Assistant to the Branch Chief, Branch 1
Office of Chief Counsel (Corporate)

cc: